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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JOEMAR DARRELL TIEBOUT, Defendant and Appellant.	D073654 (Super. Ct. No. JCF34242)

APPEAL from a judgment of the Superior Court of Imperial County, Diane B. Altamirano, Judge. Affirmed.

Theresa Osterman Stevenson, under apportionment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

Following a 2015 plea of no contest to a charge of shooting at an inhabited dwelling, defendant Joemar Darrell Tiebout was placed on three years' formal probation with various conditions including that he obey all laws. In 2017 Tiebout was arrested after an incident in which he fled from a police officer attempting to make a traffic stop and then rolled his car on the embankment of a freeway onramp. At the conclusion of an evidentiary hearing, the superior court found that Tiebout had violated the terms and conditions of his probation, revoked probation, and sentenced him to a previously stayed seven-year prison term. He appeals, contending there was insufficient evidence to support one of the two law violations relied on by the court. With or without the additional violation he maintains the court abused its discretion in failing to reinstate probation. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

2015 Case

In June 2015 Tiebout pled no contest to one count of shooting at an inhabited dwelling. (Pen. Code, § 246.) In exchange, other counts and allegations were dismissed. The court imposed and suspended a seven-year prison sentence, placing Tiebout on three years' probation with various terms and conditions. Among the probation terms was a standard condition that Tiebout "[o]bey all laws."

2017 Incident

At around 2:00 a.m. on December 17, 2017, El Centro police officer James Thompson saw Tiebout get into a car near Rocky's bar and a Denny's restaurant. As Tiebout's vehicle left the parking lot, Thompson heard the engine rev and tires screech.

Tiebout sped off westbound on Ocotillo Drive. Thompson was parked in the parking lot of an adjacent 7-Eleven. He activated the overhead lights and siren on his patrol car as he left the parking lot. Thompson followed Tiebout, intending to make a traffic stop.

After stopping at a traffic light, Tiebout made a left turn onto Imperial Avenue and took the ramp to Interstate 8 eastbound. When the pursuit began, Thompson's vehicle was about 10 car lengths behind, but Tiebout rapidly accelerated and Thompson lost sight of him as he turned onto Interstate 8. Shortly thereafter, however, Thompson saw "a large cloud of dirt or smoke . . . on the embankment off to the side of the freeway."

As he got closer, Thompson could see that Tiebout's vehicle had gone off the road, landing on its roof. He later observed Tiebout, who appeared to be injured, about 60 feet distant attempting to crawl away from his car. When he approached on foot, Thompson saw a container of beer near Tiebout's vehicle; the inside of the car smelled like an alcoholic beverage. Tiebout was ultimately transported by Life Flight to a hospital in Palm Springs.

DISCUSSION

1. *Sufficiency of the Evidence*

The trial court found that Tiebout violated the terms and conditions of his probation—specifically the requirement that he "[o]bey all laws"—because he engaged in reckless driving (see Veh. Code, § 23103) in his attempt to evade a police officer. (Veh. Code, § 2800.2.) Tiebout does not contest that he drove recklessly, but argues there was insufficient evidence to show he had the required specific intent to evade Officer Thompson. In assessing this contention, we review the entire record in the light most

favorable to the judgment to determine whether a reasonable fact-finder could conclude by a preponderance of the evidence that the defendant violated the terms of his probation as alleged. (See *People v. Johnson* (1980) 26 Cal.3d 557, 578; *People v. Rodriguez* (1990) 51 Cal.3d 437, 441 (*Rodriguez*) [standard of proof for probation revocation is by a preponderance of the evidence].)

Tiebout suggests the trial court could not properly find that he actually saw Thompson's patrol vehicle with lights and siren activated so as to infer that he was intending to evade the officer. To accept this argument, however, would require us to construe the testimony in the light most favorable *to Tiebout*, something we are not permitted to do. Thompson plainly testified that "right after" he activated his lights and siren he observed Tiebout rapidly accelerate. It was only *after* that happened that Thompson "lost sight of [Tiebout's] vehicle as he went around the curve to get onto the I-8 eastbound." It is a reasonable inference that if Thompson could see Tiebout, Tiebout could also see Thompson and was therefore aware he was being pursued by law enforcement. The fact that he accelerated so rapidly that he lost control of his car is further circumstantial evidence that he was attempting to evade Thompson.

2. *Decision to Revoke Rather Than Reinstate Probation*

Tiebout next contends the trial court abused its discretion in declining to reinstate probation and instead choosing to impose the previously stayed term of seven years in prison. We review this argument cognizant of the fact that the trial court exercises particularly broad discretion is deciding whether to revoke or reinstate probation. "[G]reat deference is accorded the trial court's decision, bearing in mind that '[p]robation

is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court.' " (*People v. Urke* (2011) 197 Cal.App.4th 766, 773, quoting *People v. Pinon* (1973) 35 Cal.App.3d 120, 123.) Indeed, it would only be in a "very extreme case" that an appellate court would be justified in interfering with the discretion of the trial court in revoking probation. (*People v. Lippner* (1933) 219 Cal. 395, 400; accord *Rodriguez*, *supra*, 51 Cal.3d at p. 443.)

Here the record reflects that the trial court considered the relevant factors as reflected in the probation report and the statements in aggravation and mitigation filed by the parties. (See Cal. Rules of Court, rule 4.414.) Probation was granted in the original matter despite the seriousness of the offense. As the court explained, that sentencing decision was based on many of the same mitigating factors argued by defense counsel in this case, but Tiebout "knew that if he violated his probation in any manner" the suspended sentence would be imposed. Tiebout admitted the circumstances of the incident indicated he had a "drinking and driving issue" that needed to be addressed. Yet this was not a new problem; drug and alcohol issues were also noted in the original probation report.

We do not minimize the difficult calculus the trial court was required to perform. In some ways Tiebout had performed reasonably well on probation, so this was likely not an easy decision. Yet even where there are "several mitigating factors that might weigh in favor of probation, this does not necessarily mean that the trial court abused its discretion in deciding against granting probation." (*People v. Ramirez* (2006) 143 Cal.App.4th 1512, 1530–1531.) And this is all the more true where the issue is whether

to *revoke* probation already granted after there has been a failure to comply with its terms.[1]

Tiebout has failed to show that the decision to revoke rather than reinstate probation was arbitrary and capricious such that no reasonable judge could have reached the same conclusion. (See generally *People v. Carmony* (2004) 33 Cal.4th 367, 377.)

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1 Tiebout contends he was "punished" for exercising his right to a revocation hearing because the prosecutor at the outset of the hearing offered a disposition that would have extended Tiebout's probationary period for two years and ordered him to serve a year in county jail instead of revoking probation. The argument is without merit. The offer was by the *prosecutor*; the court had no role in making it and did nothing to influence Tiebout's decision whether to accept it. Moreover, a prosecutor's unaccepted pretrial offer cannot limit the trial court's sentencing discretion.

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.